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Employer Rights & Responsibilities Following an OSHA Inspection

U.S. Department of Labor
Occupational Safety and
Health Administration

1989 (Revised)
OSHA 3000

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To The Reader

The Occupational Safety and Health Act of 1970 was created in order to "assure so far as possible every working man and woman in the nation safe and healthful working conditions." OSHA is expending every effort to make this goal a reality, but we cannot do it without your continuing help and support. Therefore, we are providing you with this pamphlet so that you can help us help you. *Employer Rights and Responsibilities Following an OSHA Inspection* is designed to explain the options available to you and is part of our ongoing program to promote cooperation among labor, management, and government.

Employer Rights & Responsibilities Following an OSHA Inspection

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Health Administration
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After An Inspection

An inspection of your workplace was conducted in accordance with the Occupational Safety and Health Act of 1970. The compliance safety and health officer (CSHO) who conducted the inspection has found conditions that may be in violation of the Act. The information relevant to these conditions will be evaluated by the CSHO's supervisor. If it is determined that a violation does exist, you will be issued a Citation and Notification of Penalty which explains in detail the exact nature of the violation(s) and any associated penalties.

This pamphlet contains important information regarding your rights and responsibilities under the Act. The information contained herein can and should be used as a discussion guide during your closing conference with the OSHA compliance officer. For each apparent violation found during the inspection, the compliance officer has discussed or will discuss the following with you:

- Nature of the violation,
- Possible abatement measures you may take to correct the violative condition, and

- Possible abatement dates you may be required to meet.

The CSHO is a highly trained professional who can help you recognize and evaluate hazards as well as suggest appropriate methods of correcting violations. To minimize employee exposure to possibly hazardous conditions, abatement efforts should always begin as soon as possible.

The following general information defines the types of violations and explains the actions you may take if you receive a citation as the result of an inspection.

Types of Violations

Willful: A willful violation is defined as a violation in which the employer knew that a hazardous condition existed but made no reasonable effort to eliminate it and in which the hazardous condition violated a standard, regulation, or the Occupational Safety and Health Act (the Act).

Serious: A serious violation exists when the workplace hazard could cause an accident or illness that would most likely result in death or serious physical harm, unless the employer did not know or could not have known of the violation.

Repeated: An employer may be cited for a repeated violation if that employer has been cited previously for a **substantially similar condition** and the citation has become a final order of the Occupational Safety and Health Review Commission. A citation is viewed as a repeated violation if it occurs within 3 years either from the date that the earlier citation becomes a final order or from the final abatement date, whichever is later. For purposes of determining whether a violation is repeated, the following criteria generally apply:

1. **Fixed Establishments:** Citations issued to employers having fixed establishments (e.g., factories, terminals, stores) are normally limited to the cited establishment. A multifacility employer, for example, normally would not be cited for a repeated violation if the violation recurred at a plant other than the one previously cited.

2. **Nonfixed Establishments:** For employers engaged in businesses having no fixed establishments (e.g., construction sites, oil and gas drilling sites), repeated violations are alleged based on

prior violations occurring anywhere within the same OSHA Area Office jurisdiction.

3. **Longshoring Establishments:** Longshoring employers are subject to repeated violation citations based on prior violations occurring anywhere within a designated port area.

4. **Maritime Establishments:** Other maritime establishments covered by OSHA standards (e.g., shipbuilding, ship repairing) are generally defined as fixed establishments. (See [1] above.)

IN CASES WHERE A VIOLATION IS DETERMINED TO BE EXTREMELY SERIOUS, IT CAN BE CITED AS REPEATED IF THE EMPLOYER HAS BEEN CITED FOR THE SAME SERIOUS VIOLATION *ANYWHERE IN THE NATION* WITHIN THE PAST 3 YEARS.

Other: A violation that has a direct relationship to job safety and health, but is not serious in nature, is classified as "other."

Posting Requirements

When you receive a Citation and Notification of Penalty, you must post the citation (or a copy of it) at or near the place where each violation occurred to make employees aware of the hazards to which they may be exposed. The citation must remain posted for 3 working days or until the violation is corrected, whichever is longer. (Saturdays, Sundays, and Federal holidays are not counted as working days.) **You must comply with these posting requirements even if you contest the citation.**

Employer Options

As an employer who has been cited, you may take either of the following courses of action:

1. If you agree to the Citation and Notification of Penalty, you should correct the condition by the date set in the citation and pay the penalty, if one is proposed; or

2. If you do not agree, you have 15 working days from the date you receive

the citation to contest in writing any or all of the following:

- Citation,
- Proposed penalty, and/or
- Abatement date.

How to Comply

For violations you do not contest, you must (1) promptly notify the OSHA Area Director by letter that you have taken the appropriate corrective action within the time set forth in the citation, and (2) pay any penalties itemized therein.

The notification you send the Area Director is generally referred to as a "Letter of Corrective Action." It must explain the specific action taken with regard to each violation and state the date each corrective action was taken.

If the employer has abatement questions after the inspection, the Area Director shall ensure that additional information, if available, is obtained and provided to the employer as soon as possible.

When the citation permits an extended time

for abatement, you must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. When such is the case, you must also provide OSHA with periodic progress reports on your actions.

The penalties itemized on the Citation and Notification of Penalty are payable within 15 working days of receipt of the penalty notice. If, however, you contest the citation or penalty in good faith, abatement and payment of penalties for those items contested are suspended until the Occupational Safety and Health Review Commission reviews your case and issues a final order. The Review Commission is an independent agency and is **not** a part of the U.S. Department of Labor. The final order of the Commission will either uphold, modify, or eliminate the citations and/or penalties. Penalties for items not contested, however, are still due within 15 working days. (For further details, see the section on **How to Contest**.)

Payment should be made by check or money order payable to DOL-OSHA. Please indicate on your payment the OSHA number from the

upper right-hand corner of your citation and **send it to the OSHA Area Office listed on the Citation and Notification of Penalty**.

Informal Conference and Settlement

Before deciding whether to file a Notice of Intent to Contest, you may request an informal conference with the OSHA Area Director to discuss the Citation and Notification of Penalty. You may use this opportunity to do any of the following:

- Obtain a better explanation of the violations cited,
- Obtain a more complete understanding of the specific standards that apply,
- Negotiate and enter into an Informal Settlement Agreement,
- Discuss ways to correct violations,
- Discuss problems concerning the abatement dates,
- Discuss problems concerning employee safety practices,

- Resolve disputed citations and penalties, and

- Obtain answers to any other questions you may have.

You are encouraged to take advantage of the opportunity to have an informal conference if you foresee any difficulties in complying with any part of the citation. Please note, however, that an informal conference will neither extend the 15 working day Notice of Intent to Contest period nor take the place of the filing of a written notice if you desire to contest. Employee representative(s) have the right to participate in any informal conference or negotiations between the Regional Administrator or Area Director and the employer.

If you agree that the cited violations do exist, but you have a valid reason for wishing to extend the abatement date(s), you may discuss this with the Area Director in an informal conference. He or she may issue an amended citation that changes the abatement date prior to the expiration of the 15 working day period without your filing a Notice of Intent to Contest.

If you do not contest within 15 working days,

your citation will become a final order. After this occurs, the OSHA Area Director may continue to provide you with information and assistance on how to abate the hazards cited in your citation, but may not amend or change any citation or penalty which has become a final order. The Area Director may only advise you on abatement methods or extend the time you need to abate the violation. (See **Petition for Modification of Abatement**).

How to Contest

If you wish to contest any portion of your citation, a Notice of Intent to Contest must be submitted in writing within 15 working days after receipt of the citation and notice of penalty even if you have orally stated your disagreement with a citation, penalty, or abatement date during a telephone conversation or an informal conference.

The Notice of Intent to Contest must clearly state what is being contested--the citation, the penalty, the abatement date, or any combination of these factors. In addition, the notice must state whether all the violations on the citation, or just specific violations, are being contested. (For example, "I wish to contest the citation and penalty proposed for

items 3 and 4 of the citation issued June 27, 1989.")

Your contest must be made in good faith. A contest filed solely to avoid your responsibilities for abatement or payment of penalties will not be considered a good-faith contest.

A proper contest of any item suspends your legal obligation to abate and pay until the item contested has been judicially resolved. If you contest only the penalty, you must still correct all violations by the dates indicated on the citation. If only some items on the citation are contested, the other items must be corrected by the abatement date and the corresponding penalties paid within 15 days of notification.

After you file a Notice of Intent to Contest, your case is officially in litigation. If you wish to settle the case, you may contact the OSHA Area Director who will give you the name of the attorney for OSHA handling your case. All settlements of contested cases are negotiated between you and the attorney according to the rules of procedure of the Occupational Safety and Health Review Commission.

The Contest Process

If the written Notice of Intent to Contest has been filed within the required 15 working days, the OSHA Area Director forwards your case to the Occupational Safety and Health Review Commission. The Commission assigns the case to an administrative law judge who usually will schedule a hearing in a public place close to your workplace. Both employers and employees have the right to participate in this hearing which contains all the elements of a trial, including examination and cross-examination of witnesses. You may choose to represent yourself or be represented by an attorney. The administrative law judge may affirm, modify, or eliminate any contested items of the citation or penalty.

As with any other legal procedure, there is an appeals process. Once the administrative law judge has ruled, any party to the case may request a further review by the full Review Commission. In addition, any of the three commissioners may, on his or her own motion, bring the case before the entire Commission for review. The Commission's ruling, in turn, may be appealed to the U.S. Court of Appeals for the circuit in which the

case arose or for the circuit where the employer has its principal office.

Petition for Modification of Abatement

Abatement dates are assigned on the basis of the best information available at the time the citation is issued. When you are unable to meet an abatement date because of uncontrollable events or other circumstances, and the 15 working day contest period has expired, you may file a "Petition for Modification of Abatement" (PMA) with the OSHA Area Director.

The PMA must be in writing and must be submitted no later than 1 working day after the abatement date. To show clearly that you have made a good-faith effort to comply, the PMA must include all of the following information before it can be considered:

- Steps you have taken in an effort to achieve compliance, and dates they were taken;
- Additional time you need to comply;

- Why you need additional time;
- Interim steps you are taking to safeguard your employees against the cited hazard(s) until the abatement;
- A certification that the petition has been posted, the date of posting and, when appropriate, a statement that the petition has been furnished to an authorized representative of the affected employees. The petition must remain posted for 10 working days, during which employees may file an objection.

A PMA may be granted or opposed by the OSHA Area Director. If it is opposed, it automatically becomes a contested case before the Review Commission. If a PMA is granted, a monitoring inspection may be conducted to ensure that conditions are as they have been described and that adequate progress toward abatement has been made. Further information on PMAs may be obtained from the OSHA Area Office.

Temporary and Permanent Variances

If you are unable to comply with a newly promulgated standard because of the unavailability of materials, equipment, or professional or technical personnel, you may apply to OSHA for a **temporary variance** from the standard.

To be eligible for a temporary variance, the employer must put into force an effective program for coming into compliance with the standard or regulation as quickly as possible. In the meantime, the employer must demonstrate to OSHA that all available steps are being taken to safeguard employees.

A temporary variance may be granted for up to 1 year; it can be renewed twice, each time for 6 months.

You may also apply for a **permanent variance** from a standard if you can prove that your present facilities or methods of operation are at least as safe and healthful as those required by the OSHA standard.

In making a determination on a permanent variance, OSHA reviews the employer's evidence and, where appropriate, arranges a visit to the workplace to confirm the

circumstances of the application. If the request has merit, OSHA may grant a permanent variance. Final variance orders detail the employer's specific responsibilities and requirements and explain exactly how the employer's method varies from the OSHA requirement.

Please note, however, that whenever an employer applies for either a temporary or a permanent variance, he or she must inform employees of the application and of their right to request a hearing.

Employee Courses of Action

Employees or their authorized representatives may contest any or all of the abatement dates set for violations if they believe them to be unreasonable. A written Notice of Intent to Contest must be filed with the OSHA Area Director within 15 working days after the employer receives the citation.

The filing of an employee contest does not suspend the employer's obligation to abate.

Employees also have the right to object to a PMA. Such objections must be in writing and must be sent to the Area Office within 10 days of service or posting. A decision

regarding the PMA will not be made until the issue is resolved by the Review Commission.

Follow-Up Inspection and Failure to Abate

If you receive a citation, a follow-up inspection may be conducted to verify that you have done the following:

- Posted the citation as required,
- Corrected the violations as required in the citation and/or
- Adequately protected employees and made appropriate progress in correcting hazards during multi-step or lengthy abatement periods.

In addition to providing for penalties for failure-to-post citations and failure-to-abate violations, the Act clearly states that you have a **continuing responsibility** to comply with the Act and assure your employees of safe and healthful working conditions. Any new violations discovered during a follow-up inspection will be cited.

To achieve abatement by the date set forth in

the citation, it is important that abatement efforts be promptly initiated.

Employer Discrimination

The Act prohibits employers from discharging or otherwise discriminating against an employee who has exercised any right under this law, including the right to make safety and health complaints or to request an OSHA inspection. Complaints from employees who believe they have been discriminated against will be investigated by OSHA. If the investigation discloses probable violations of employee rights, court action may follow.

Employees who feel they have been discriminated against must file their complaints within **30 days** of the alleged act of discrimination. To obtain further information on this matter, employees may contact OSHA and inquire about Section 11(c) procedures.

Providing False Information

All information reported to OSHA by employers and employees must be accurate and truthful. Providing false information on

efforts to abate cited conditions or in required records is punishable under the Act.

Additional Information

For further information and assistance, please feel free to contact your OSHA Area Director.

Related Publications

A single free copy of the following materials can be obtained from OSHA field offices or the OSHA Publications Office, 200 Constitution Avenue, N. W., Room N-3101, Washington, D. C. 20210.

OSHA-2056 - All About OSHA

OSHA-3047 - Consultation Services for the Employer

OSHA-3071 - Job Hazard Analysis

OSHA-3084 - Chemical Hazard Communication

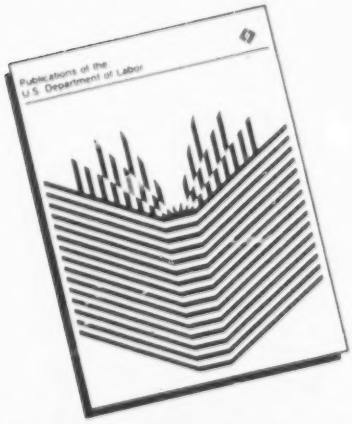
OSHA-3111 - Hazard Communication Guidelines for Compliance

OSHA-3088 - How to Prepare for Workplace Emergencies

BLS Publication 421-3--What Every Employer Needs to Know about OSHA Recordkeeping

OSHA-3104 - Hazard Communication--A Compliance Kit
(This reference guide to step-by-step requirements for compliance with the OSHA standard is available from the Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238. Request GPO Order No. 929-022-00000-9; $18 - domestic; $22.50 - foreign.)

Free for the asking.



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*These states and territories operate their own OSHA-approved job safety and health programs (Connecticut and New York plans cover public employees only). States with approved programs must have a standard that is identical to, or at least as effective, as the Federal standard.